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KEY ELEMENTS OF PUBLIC PRIVATE PARTNERSHIP ("PPP") AGREEMENTS

Last Updated: September 2005

No.	Key Element/Legal Issue:	Response/Suggested Model Provision:
1.	Type of PPP agreement: a. Design-Build-Operate-Maintain b. Pre-Development Agreement c. Concession - Investor Financed d. Concession - Tax-exempt Financed e. Other _____	Other: Design-build with an option for long-term maintenance.
2.	Agreement resulted from: a. Unsolicited proposal and negotiations b. Competitive procurement following unsolicited proposal c. Competitive procurement d. Sole-source negotiations e. Other _____	This transaction resulted from a competitive procurement.
3.	What is the title and date of the primary PPP agreement? Who are the parties to that agreement? What is the form of the private entity (e.g., corporation, LLP, LLC, partnership or joint venture)? If a joint venture, is there joint and several liability? Are the obligations of the private entity guaranteed by one or more third parties (other than sureties)?	Exclusive Development Agreement, dated June 19, 2002, between TxDOT and Lone Star Infrastructure (the Developer). Lone Star Infrastructure is a joint venture comprised of Fluor Daniel, Balfour Beatty and T.J. Lambrecht Construction Company. There is joint and several liability. Fluor Corp. is a guarantor under a guarantee of all the Developer's obligations.
4.	Describe conditions applicable to the financing plan (types, sources, and covenants of capital financing). Describe any public subsidy of revenues (e.g. shadow tolls, assumption of operation and maintenance costs).	TIFIA, tax-exempt bonds, state and federal funds, and a \$10 million subordinated note from the Developer to cover change orders. The State of Texas agreed to pay operations and maintenance in the event of funding shortfalls if revenues are insufficient to cover them.

5.	What other major ancillary agreements are there? Are other agreements contemplated to be executed in the future (e.g., such agreements might include a design-build contract, a concession agreement, a full or partial completion guaranty and/or financing agreements)?	In addition to the Design-Build Contract, there is a separate Capital Maintenance Contract for up to 15 years, exercisable at the option of TxDOT.
6.	What are the roles of the public and private entities for pre-financing tasks, such as project definition, preparation of environmental documents, permitting, traffic and revenue studies, surveys, geotechnical investigations, right-of-way acquisition and preliminary engineering, public involvement?	TxDOT performed due diligence activities, including traffic and revenue studies, surveys, and geotechnical investigations, and obtained NEPA environmental approval prior to the execution of the contract. The Developer performed limited design and right-of-way acquisition activities pursuant to a limited notice to proceed prior to the close of finance.
7.	How is the private entity to be compensated for pre-financing costs (e.g., current reimbursement, reimbursement from financing proceeds, development fee, return-on-equity contribution)?	TxDOT paid for pre-financing costs and was reimbursed from the financing proceeds.
8.	How is the private entity to be compensated for its equity and debt contributions with respect to design, acquisition, permitting, construction, and related services? How is the private entity to be compensated for operation and maintenance services?	No equity contributions were made by the private entity. The Developer is paid based on progress under the CPM payment schedule. Lump-sum agreement payable in monthly installments.
9.	Is the public entity required to exercise its power of eminent domain to facilitate the transportation facility?	Yes.
10.	Does the public entity establish the design, construction, operation and maintenance standards with which the private entity must comply?	Yes.
11.	Describe any payment due from the private entity to the public entity for the grant of rights.	None.
12.	What is the mechanism by which user fees, if any, are established and adjusted? Describe any limitations or user fees and exempt vehicles.	N/A.
13.	Describe any revenue recovery between the public and private entities.	The Developer note, if executed to pay change orders, will be paid from net revenues, but is subordinated to other debt.
14.	What is the duration of the agreement and what are the options to extend this timeframe (if applicable)?	The Exclusive Development Agreement includes separate deadlines for each of the 4 initial segments and 2 optional segments. The deadline for completion of the initial segments is 1,724 days after issuance of the post-financing notice to proceed. The capital maintenance agreement includes three 5-year option terms for a maximum of 15 years.
15.	What are the major performance milestones that will be required of the parties, including the public entity and the private entity?	TxDOT was responsible for achieving the close of finance. The Developer is responsible for completing design and constructing the project in accordance with the schedule and contract. The Capital Maintenance Agreement includes maintenance criteria. TxDOT is responsible for operations.

16.	If applicable, describe the private entity's rights and obligations to provide future project capacity improvements, extras, or expansions.	N/A.
17.	Who is responsible for the operation and maintenance of the completed facility?	TxDOT is responsible for operations. At TxDOT's option, the Developer will be responsible for maintenance.
18.	Describe any provisions relative to competitive transportation facilities (include a description of what constitute competitive facilities, exceptions, and measure of damages).	N/A.
19.	Is the private entity required to reimburse the public entity for services? For design review? Permitting? Operation and maintenance? Policing?	N/A.
20.	If applicable, what is the reasonable/ maximum return or rate of return on investment authorized for the developer/ operator to earn, the formula by which such rate of return will be calculated and the distribution of project revenues?	N/A.
21.	What events constitute developer/operator defaults, and what are the major remedies available to the public owner?	Developer defaults include: Developer breaches any covenant, term or condition in the Exclusive Development Agreement; Developer assigns its interest in the agreement; Developer fails to pay claims or satisfy judgments; bankruptcy; fraud or misrepresentation.
22.	What other rights does the public entity have to terminate the agreement (e.g., failure to meet milestones, termination for convenience)? If the agreement is terminated for convenience, what compensation is paid to the private entity?	Failure to meet the schedule is grounds for termination for cause. TxDOT also retains the right to terminate for convenience, in which case the Developer would be entitled to payment for work performed and accepted plus a reasonable profit plus settlement charges. Compensation in the event of a termination for convenience may not exceed the Contract Price less amounts previously paid.
23.	What events constitute public entity defaults, and what are the remedies available to the developer/operator?	None.
24.	What are the lender's rights and remedies with respect to private entity defaults? Does the agreement provide for lender's rights and remedies?	No.
25.	What indemnification obligations do each of the parties have?	The Developer must indemnify TxDOT for any losses due to the Developer's acts or omissions.
26.	What are the obligations of the developer/ operator to maintain records, to allow inspection and audit and to provide regular reports to the public owner?	The Developer must retain all books and records prepared in connection with the project for 5 years after final acceptance. The Developer must allow TxDOT access to these books and records.
	What obligation does the public entity have to maintain the confidentiality of specified information?	Information in the possession of TxDOT is subject to the state Public Records Act provisions. Pricing documents supporting the Developer's proposal and change orders are proprietary information that is escrowed.

27.	<p>What are the conditions under which the private entity may assign its rights under the PPP agreement and/or its rights to the transportation facility?</p> <p>Does the PPP agreement contemplate a subsequent assignment of the private entity's rights to another entity, such as a non-profit corporation to be formed for the purpose of financing the project?</p> <p>Can it make an assignment for security?</p> <p>Can it transfer its rights and obligations to an affiliate or unrelated third party? What are the conditions, if any, to obtain the consent of the government entity?</p>	Assignment only allowed with TxDOT approval in its sole discretion.
28.	What dispute resolution mechanisms are provided for?	Partnering and statutory dispute resolution mechanism.
29.	Describe any provisions limiting liability or waiving consequential damages.	<p>The Exclusive Development Agreement provides for a limitation of liability in the amount of \$100 million plus the amount to complete or correct the work.</p> <p>There is a separate \$1 million cap on consequential damages for each segment.</p>

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